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Twenty-fifth session

SUMMARY RECORD OF THE 483rd MEETING

Held at Headquarters, New York,
on Friday, 15 May 1992, at 10 a.m.

Chairman: Mr. ABASCAL ZAMORA (Mexico)

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Adoption of the report of the Commission

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The meeting was called to order at 10.40 a.m.

ADOPTION OF THE REPORT OF THE COMMISSION (A/CN.9/XXV/CRP.1 and Add.1-13)

1. Mr. DUCHEK, (Austria), Rapporteur, introducing the draft report of the United Nations Commission on International Trade Law (UNCITRAL) on the work of its twenty-fifth session (A/CN.9/XXV/CRP.1 and Add.1-13), said that, in the second line of paragraph 6 of document A/CN.9/XXV/CRP.1, "Cuba" should be added after "Côte d'Ivoire".

2. In document A/CN.9/XXV/CRP.1/Add.5, the following should be inserted after the last sentence of paragraph 53:

"Index

53a. The Commission noted that the Secretariat would prepare an index to the Legal Guide."

3. In document A/CN.9/XXV/CRP.1/Add.12, at the end of the last sentence of paragraph 6, the words "and the Commission expressed gratitude to those speakers for their readiness to contribute to the Congress," should be added. In paragraph 13 of that document, the last sentence should read: "The session would be held from 4 to 15 January 1993."

4. In document A/CN.9/XXV/CRP.1/Add.13, in the first line of the footnote, the word "may" should replace "might".

Introduction (A/CN.9/XXV/CRP.1)

5. The introduction was adopted.

Chapter I (A/CN.9/XXV/CRP.1)

6. Chapter I was adopted.

Chapter II (A/CN.9/XXV/CRP.1 and Add.1-3)

7. Mr. BURMAN (United States of America) said that, in the third sentence of paragraph 5 of document A/CN.9/XXV/CRP.1/Add.1, the words "might have" should be deleted, since the Commission had not agreed on that wording.

8. Mr. DUCHEK (Austria), Rapporteur, said that document A/CN.9/XXV/CRP.1/Add.4 would reflect the discussion that the Commission had held on the subject.

9. Mr. BURMAN (United States of America) proposed that a footnote should be included in paragraph 5, referring the reader to the relevant text in document A/CN.9/XXV/CRP.1/Add.4.

10. Mr. CHATURVEDI (India) proposed that the following sentence should be inserted after the third sentence of paragraph 17 of document A/CN.9/XXV/CRP.1/Add.1:

> "It was also stated that this exclusion of remedies will be contrary to the system of judicial review found in certain systems of law and will therefore be illegal."

11. The Indian proposal was adopted.

12. Mr. BURMAN (United States of America) said that, after the third sentence in paragraph 18, the following sentence should be inserted: "However, the view was expressed that analogies to these conventions were inappropriate, since credit transfers involved very high volumes of transactions at high speed and in other ways were quite different."

13. Mr. DUCHEK (Austria), Rapporteur, said that, if the United States proposal was adopted, the sentence following that addition should begin: "In opposition to the current text it was further stated ...".

14. Both proposals were adopted.

15. Mr. FUJISHITA (Japan) proposed that, after the fifth sentence of paragraph 7 of document A/CN.9/XXV/CRP.1/Add.2, the following sentence should be added:

> "It was also pointed out that international conventions concerning negotiable instruments, including the United Nations Convention on International Bills of Exchange and International Promissory Notes, do not contain any such provision."

16. Mr. BURMAN (United States of America) said that the sentence proposed by the representative of Japan should be followed by the sentence:

> "It was, however, also stated that a reference to that Convention was inappropriate because of the significant difference in subject-matter and the provisions therein."

17. Both proposals were adopted.

18. Mr. DUCHEK (Austria), Rapporteur, said he hoped that the representatives of Japan and the United States of America would give the secretariat some leeway with respect to the exact wording and placement of the two additional sentences.

19. Mr. FUJISHITA (Japan) proposed that the third sentence of paragraph 9 of document A/CN.9/XXV/CRP.1/Add.2 should be replaced by the following:

> "It was also stated that, in view of the fact that the Model Law had been drafted so as to protect banks against receiving funds at the bank they might not approve of because of its credit risk, a similar protection should be given to the beneficiary".

20. Mr. BHALA (United States of America) proposed that, if the Japanese amendment was adopted, the following sentence should be added immediately afterwards: "In opposition to this view, it was noted that the Model Law does not deal with credit risk matters."

21. Both proposals were adopted.

22. Mr. BURMAN (United States of America) proposed that the following sentence should be added at the end of paragraph 17 of document A/CN.9/XXV/CRP.1/Add.2:

> "It was also noted that two different credit transfers were involved, and the parties played different roles in each transfer. Therefore it was argued that no conflict existed."

23. The proposal was adopted.

The meeting was suspended at 11.40 a.m. and resumed at 12.05 p.m.

24. Mr. GREGORY (United Kingdom) proposed that the last sentence of paragraph 18 of document A/CN.9/XXV/CRP.1/Add.2 should be amended to read: "After discussion, the Commission agreed that article 5 should be modified and referred the matter to the Drafting Group."

25. The proposal was adopted.

26. Mr. SCHNEIDER (Germany) proposed that the following sentence should be inserted at the beginning of paragraph 2 of document A/CN.9/XXV/CRP.1/Add.3:

> "In discussing article 18, different views were expressed as to whether a provision about conflict of laws was needed and desirable or not."

27. Mr. CHATURVEDI (India) proposed that the beginning of paragraph 5 should be amended to read: "Since no consensus was reached on the deletion or retention of article 18, the Commission decided ...". Paragraphs 6 and 7 should be deleted.

28. The CHAIRMAN noted that the compromise solution adopted by the Commission had been to approve paragraphs (1), (2) and (3) of article 18, but place them in a footnote.

29. Mr. SAFARIAN NEMAT-ABAD (Islamic Republic of Iran) supported the German proposal.

30. Mr. BURMAN (United States of America) also supported the German proposal. He pointed out that its adoption would resolve the issue raised by the Indian representative.

31. The German proposal was adopted.

32. Mr. CHATURVEDI (India) proposed that a sentence should be added at the end of paragraph 9 of document A/CN.9/XXV/CRP.1/Add.3, stating that one delegation had felt that a definition of "beneficiary's bank" would be useful.

33. Mr. BURMAN (United States of America) proposed the following addition at the end of the penultimate sentence of paragraph 12: "notwithstanding a view that the current text could be interpreted correctly as not applicable to a beneficiary's bank".

34. Mr. GREGORY (United Kingdom) said that if such an addition was made, the word "correctly" should not be included.

35. Mr. BURMAN (United States of America) proposed the addition of an extra sentence at the end of paragraph 12:

> "It was pointed out, however, that a beneficiary's bank under article 8 simply accepts or rejects a payment order, and then incurs the obligations set forth in article 9."

36. Mr. GREGORY (United Kingdom) said that if the sentence was added, then a further addition should be made immediately afterwards: "The view was expressed that the word 'execution' was apt to cover that situation."

37. Mr. BURMAN (United States of America) proposed that an extra phrase should be added at the end of paragraph 13: "although a view was expressed that a beneficiary's bank does not 'execute' payment orders".

38. Mr. GREGORY (United Kingdom) said that he did not understand the reason for such an addition.

39. Mr. BURMAN (United States of America) explained that paragraphs (1 bis) and (1 ter) of article 10 dealt with subjects which were different from those covered in paragraph (1): the proposed addition was intended to clarify that point.

40. Mr. GREGORY (United Kingdom) pointed out that paragraph 13 of document A/CN.9/XXV/CRP.1/Add.3 dealt with the issue of value dates, not execution, and he did not recall that the delegation of the United States had made any such observations during the discussions.

41. Mr. BHALA (United States of America) said that he had made that very point with respect to paragraphs (1 bis), (1 ter) and (1) of article 10.

42. Ms. BUURE-HAGGLUND (Observer for Finland) said that the report was intended to reflect the discussions in a general way. If every delegation wished its views to be noted on every specific issue, then the report would become unbalanced.

43. The CHAIRMAN urged delegations to keep their amendments to a minimum, in the light of the concerns expressed by the Observer for Finland. If, however, any delegation had strong views on a particular issue, then it was at liberty to have those views recorded.

44. Mr. GREGORY (United Kingdom) suggested a wording which would express the concerns of the United States, while at the same time avoiding an excess of individual comments, namely the addition at the end of paragraph 13 of the following words: "although differing views were expressed on the extent to which these paragraphs were capable of applying to the beneficiary's bank."

45. Mr. BURMAN (United States of America) said that he agreed with the wording put forward by the representative of the United Kingdom. He shared the concern of the observer for Finland that the report should not become unbalanced, and stressed that his delegation was not raising every issue on which its views differed from the consensus, but only those on which it felt particularly strongly.

46. The United Kingdom proposal was adopted.

47. Mr. FUJISHITA (Japan) said that paragraph 16 of document A/CN.9/XXV/CRP.1/Add.3, which was intended to reflect his own statement, did not accurately do so. He proposed that the paragraph should read:

> "A view was expressed, in connection with article 4 (2), that there was uncertainty in the meaning of 'comparison of signature' as to whether it includes also a case where both signatures and seals are compared. That method was frequently used in the banking practice of some States for the authentication of paper-based credit transfers. In view of the fact that such a method was widely used in the banking practice of some States, it was said to be desirable to expressly exclude this case from the application of 'comparison of signature'. The Commission, recalling its discussion of the issue at its previous session, decided that the text should remain unchanged."

48. The proposal was adopted.

49. Chapter II, as amended, was adopted.

Chapter III (A/CN.9/XXV/CRP.1/Add.5)

50. Mr. CHATURVEDI (India), supported by the representative of Italy, suggested deletion of the words "while not endorsing or encouraging the conducting of international trade through countertrade" from paragraph 7 of document A/CN.9/XXV/CRP.1/Add.5.

51. Mrs. FLINT (United Kingdom), supported by the representative of the United States, said that she would have no objection to the deletion of those words from the draft recommendation, but felt that as a reflection of the Commission's conviction, they should remain in the section of the report dealing with the general discussion.

52. Mr. BONELL (Italy) pointed out that paragraph 7 did not record that one delegation or another had expressed a view on endorsement or encouragement of countertrade. On the contrary, the paragraph started with the words "The Commission". At the very least, he recommended deletion of "endorsing or".

53. Mr. HUNJA (Kenya) said that many delegations would not take the view that the Commission should not encourage countertrade. He felt that the entire phrase should be deleted.

54. Mr. BURMAN (United States of America) recalled that the concept of neither endorsing nor encouraging countertrade, had been expressed by the Chairman himself, and had not drawn any comment from the floor. The phrase should therefore be retained.

55. Ms. BUURE-HAGGLUND (Observer for Finland) pointed out that paragraph 7 did not say that the Commission neither endorsed nor encouraged countertrade; it said that the Legal Guide neither endorsed nor encouraged countertrade. There had been a long discussion two years previously as to whether the Guide should take a position on countertrade, and the decision had been that it should be neutral.

56. Mrs. FLINT (United Kingdom), supported by the representative of Germany, agreed with the observer for Finland. Deletion of the words "endorsing or" might be an acceptable compromise.

57. Mr. HUNJA (Kenya) proposed that in order to have a more balanced wording, the paragraph should read: "... while not encouraging or discouraging ...".

58. The proposal was adopted.

59. Mr. PELICHET (Observer, The Hague Conference on Private International Law) said that in paragraph 33 of the French version of document A/CN.9/XXV/CRP.1/Add.5, the word "juridictions" was incorrect, even though the English word "jurisdictions" was appropriate. He suggested that "juridictions" should be replaced by "systèmes de conflit".

60. It was so decided.

61. Mr. BONELL (Italy) recalled, with respect to paragraph 48, that the Commission had decided that it would not be appropriate to refer expressly to adoption of legislation incorporating the Model Law. He therefore proposed that the phrase "or whether a State adopted legislation incorporating the UNCITRAL Model Law" should be deleted, and any necessary grammatical changes made also.

62. The proposal was adopted.

63. Chapter III, as amended, was adopted.

The meeting rose at 1.05 p.m.